

# Behavioral Health Implementation Plan

LB 1083 (2004)

## Recommendations of the Behavioral Health Oversight Commission of the Legislature

October 1, 2004

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# Introduction

## LB 1083 (2004)

LB 1083 was introduced by Senator Jim Jensen on January 14, 2004. It was passed by the Nebraska Legislature and signed by Governor Mike Johanns on April 14, 2004. Sections 1-20 of LB 1083 adopt the Nebraska Behavioral Health Services Act (act). The act is now codified at Neb. Rev. Stat., sections 71-801 to 71-820. Section 19 of LB 1083 requires the Division of Behavioral Health Services (division) to prepare and submit a Behavioral Health Implementation Plan (plan) to the Governor and the Nebraska Legislature on or before July 1, 2004. Section 20 requires that the plan be consistent with provisions of the act, and contents of the plan are prescribed.

## Legislative Intent

The purposes of the public behavioral health system in the new act are to ensure (1) public safety and the health and safety of persons with behavioral health disorders; (2) statewide access to behavioral health services; (3) high quality behavioral health services; and (4) cost-effective behavioral health services. Laws 2004, LB 1083, section 3.

The new act mandates specific reforms of the public behavioral health system in the following areas: (1) state leadership (sections 5-6); (2) regional administration (sections 7-9); (3) development of community-based behavioral health services and decreased reliance on regional center services (section 10); (4) funding (sections 11-12); and (5) statewide advocacy (sections 13-17).

## The Commission

The Behavioral Health Oversight Commission of the Legislature is required to “oversee and support” implementation of the act and to review the Behavioral Health Implementation Plan submitted by the division and provide written recommendations regarding the plan to the division and the Health and Human Services Committee of the Legislature no later than October 1, 2004. Laws 2004, LB 1083, section 19.

# Plan Summary and Analysis

## Requirements

The Behavioral Health Implementation Plan submitted by the Division of Behavioral Health Services (division) must be “consistent with the Nebraska Behavioral Health Services Act and shall include, but not be limited to, a detailed description of all completed, current, and proposed activities by the division to:

- (1) Select and appoint an administrator, chief clinical officer, program administrator for consumer affairs, and other staff within the division;
- (2) Implement necessary and appropriate administrative and other changes within the Nebraska Health and Human Services System to carry out the Nebraska Behavioral Health Services Act;
- (3) Describe and define the role and function of the office of consumer affairs within the division;

(4) Describe and define the relationship between the division and regional behavioral health authorities, including, but not limited to, the nature and scope of the coordination and oversight of such authorities by the division;

(5) Encourage and facilitate the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care for both children and adults and the integration and coordination of such services with primary health care services;

(6)(a) Identify persons currently receiving regional center behavioral health services for whom community-based behavioral health services would be appropriate, (b) provide for the development and funding of appropriate community-based behavioral health services for such persons in each behavioral health region, (c) transition such persons from regional centers to appropriate community-based behavioral health services, (d) reduce new admissions and readmissions to regional centers, and (e) establish criteria, procedures, and timelines for the closure of the Norfolk Regional Center and the Hastings Regional Center and policies and procedures for the recruitment, retention, training, and support of regional center employees affected by such closures;

(7) Integrate all behavioral health funding within the Nebraska Health and Human Services System and allocate such funding to support the consumer and his or her plan of treatment;

(8) Establish (a) priorities for behavioral health services and funding, (b) rates and reimbursement methodologies for providers of behavioral health services and draft negotiated rulemaking policies and procedures for the development and implementation of such methodologies, and (c) fees to be paid by consumers of behavioral health services, which fees shall not exceed the actual costs of providing such services;

(9) Access additional public and private funding for the provision of behavioral health services in each behavioral health region, including additional federal funding through the medical assistance program established in section 68-1018, and establish programs and procedures for the provision of grants, loans, and other assistance for the provision of such services;

(10) Encourage and facilitate activities of the State Behavioral Health Council and the advisory committees making up such council; and

(11) Promote activities in research and education to improve the quality of behavioral health services, the recruitment and retention of behavioral health professionals, and the availability of behavioral health services.” Neb. Rev. Stat., section 71-820.

### Summary

The Behavioral Health Implementation Plan (plan) was submitted by the Nebraska Health and Human Services System (HHSS) on July 1, 2004, and addresses two primary focus areas: (1) service development planning and transition of patients from the Norfolk and Hastings Regional Centers; and (2) detailed project planning for LB 1083 implementation.

Focus Area 1 includes proposed Phase I plans for FY 2004-2005 submitted by each of the six Regional Behavioral Health Authorities (regions), and HHSS responses, to address the following three state priorities: (a) the development of replacement services for acute and residential services currently being provided at the Hastings and Norfolk Regional Centers (HRC and NRC), (b) the development of community-based services for “discharge-ready” patients at HRC and NRC, and (c) the statewide development of necessary emergency psychiatric services.

Phase II plans for FY 2005-2006 and beyond will be submitted by each region no later than December 31, 2004, to address longer term “non-residential service development and/or expansion to reduce use of acute inpatient and secure subacute residential services, and increase community tenure in the least restrictive setting with stable housing.” Behavioral Health Implementation Plan, page 8. Longer-term plans include the development of a Community Resource Center in Omaha, the development of state-supported long-term care services, expansion of the sex offender unit at the Lincoln Regional Center, redesign of the Lincoln Regional Center, and the long-term assessment and statewide development of additional community-based behavioral health services.

Focus Area 2 includes a detailed project plan for implementation of LB 1083. Accepted project planning methodology was used to identify necessary deliverables, actions, and milestones for relevant sections of the legislation and HHSS work teams and staff responsible for their attainment.

The plan contemplates new and redirected funding of approximately \$48.5 million to the public behavioral health system in Nebraska as follows: (1) \$29 million in funding redirected from the Norfolk and Hastings Regional Centers; (2) \$9 million in additional federal Medicaid funding; (3) \$2 million annually in new funding for rental assistance for adults with serious mental illness; (4) \$2.5 million annually in new funding for emergency psychiatric services; and (5) \$6 million in one-time funding for the statewide development of community-based services. Behavioral Health Implementation Plan, page 3.

Implementation timelines and the actual amount of redirected funding for the development of community-based services in each behavioral health region depend on progress made in the transition of persons from HRC and NRC to appropriate community-based or other regional center services. Delays in such progress will diminish the amount of funding available. The plan assumes that acute and secure patients at the Hastings Regional Center will be transitioned first. Behavioral Health Implementation Plan, pages 9- 10.

### Analysis

In the opinion of the commission, the Behavioral Health Implementation Plan (plan) submitted by the Nebraska Health and Human Services System (HHSS) generally comports with statutory guidance given by the Legislature in LB 1083 (2004). The commission commends HHSS for its extraordinary work.

The plan as submitted is “consistent with the Nebraska Behavioral Health Services Act.” Neb. Rev. Stat., section 71-820. The plan directly addresses, in a carefully ordered fashion, virtually all sections of the act, as well as other relevant sections of LB 1083. The plan contains a detailed series of activities and “deliverables” necessary to implement the act. Pursuant to the Legislature’s explicit statutory directive, the project planning document is formatted to enumerate all “completed, current, and proposed activities” by the Division of Behavioral Health Services (division) and HHSS to implement the act. Neb. Rev. Stat., section 71-820.

LB 1083 also requires that the plan provide a “*detailed description* of all completed, current, and proposed activities by the division” to implement the act (emphasis added). Neb. Rev. Stat., section 71-820. The plan contains a detailed “listing” of such activities, but deliverables and subdeliverables are not “described.”

LB 1083 requires that the plan directly address at least eleven required elements. While the plan as presented addresses virtually all of the required elements, it does not address them as substantively or directly as may be desired. The plan does not specifically delineate the eleven

required elements, for example, and does not contain a substantive articulation of HHSS policy and intent with regard to each.

Phase I (FY 04-05) is separate from the rest of the plan, and expressly addresses short-term (FY 04-05) activities to develop appropriate community-based services for persons currently being served at the Norfolk and Hastings Regional Centers. While this is a fundamental component of reforms enacted by the Legislature in LB 1083, it should not be emphasized to diminish the relative importance of other parts of the act and other legislative priorities contained in the act, which are also necessary for the successful attainment of reform.

Phase I is also focused on services for persons committed by Mental Health Boards, and the plan elsewhere indicates that the scope of the act is limited only to such commitments. The plan provides that the following are “not part of behavioral health reform efforts:” deliverables and activities not listed in the plan document; children and adolescents; adults needing behavioral health services who are not committed to HHSS by Mental Health Boards; adult sex offenders; and forensics. Behavioral Health Implementation Plan, page 35.

Longer-term (Phase II) planning is currently underway in each behavioral health region. Phase II goals are more generally focused on the longer-term development of community-based behavioral health services, including the establishment of a “community resource center” in Omaha and state-supported long-term care services. The plan does not provide substantive detail regarding Phase II planning. Preliminary Phase II plans from each Regional Behavioral Health Authority are due on or before December 31, 2004.

Legislative intent is a key factor to be considered when implementing an act of the Legislature. LB 1083, section 3 (Neb. Rev. Stat., section 71-803) provides legislative intent regarding the purposes of the public behavioral health system, but the section is only indirectly addressed in the plan.<sup>1</sup>

## Plan Recommendations

### Introduction

The Behavioral Health Oversight Commission of the Legislature (commission) met on July 9, August 13, and September 10, 2004. One of the primary objective of the meetings was to facilitate a more thorough understanding and review of the Behavioral Health Implementation Plan (plan) and the development of commission recommendations regarding the plan. Written recommendations were presented and discussed on September 10, 2004. Commission recommendations were adopted by majority vote. A voice vote was taken on recommendations unless a record vote was requested.

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<sup>1</sup> Section 3 of LB 1083 (2004), in full, provides: “The purposes of the public behavioral health system are to ensure: (1) The public safety and the health and safety of persons with behavioral health disorders;

(2) Statewide access to behavioral health services, including, but not limited to, (a) adequate availability of behavioral health professionals, programs, and facilities, (b) an appropriate array of community-based services and continuum of care, and (c) integration and coordination of behavioral health services with primary health care services;

(3) High quality behavioral health services, including, but not limited to, (a) services that are research-based and consumer-focused, (b) services that emphasize beneficial treatment outcomes and recovery, with appropriate treatment planning, case management, community support, and consumer peer support, (c) appropriate regulation of behavioral health professionals, programs, and facilities, and (d) consumer involvement as a priority in all aspects of service planning and delivery; and

(4) Cost-effective behavioral health services, including, but not limited to, (a) services that are efficiently managed and supported with appropriate planning and information, (b) services that emphasize prevention, early detection, and early intervention, (c) services that are provided in the least restrictive environment consistent with the consumer's clinical diagnosis and plan of treatment, and (d) funding that is fully integrated and allocated to support the consumer and his or her plan of treatment.” Laws 2004, LB 1083, section 3.

Four recommendations were adopted by the commission. Five other recommendations were voted on by the commission but not adopted. Other informal observations, suggestions, and recommendations were made by members of the commission but not formally voted on by the commission. They are summarized in the written minutes of the commission and are not included here. Additional recommendations may be considered and formally adopted by the commission at future meetings.

#### Adopted Recommendations

The following recommendations were formally adopted by the commission on September 10, 2004:

##### 1. Scope and Legislative Intent.

The Behavioral Health Oversight Commission of the Legislature recommends that the Behavioral Health Implementation Plan be amended to clarify that the scope of the Nebraska Behavioral Health Services Act (Neb. Rev. Stat., sections 71-801 to 71-820) includes all elements of the public behavioral health system in the State of Nebraska and all consumers served by the system, and to more clearly reflect the Legislature's intent to reform the system as a whole, within the limitations of available funding, for the purpose of providing better services and outcomes for consumers.

##### 2. Phase I and Phase II Planning.

The Behavioral Health Oversight Commission of the Legislature recommends that the Behavioral Health Implementation Plan be amended to clarify the integration of shorter-term (Phase I) and longer-term (Phase II) planning into the overall project plan for implementation of LB 1083 (2004) generally and the Nebraska Behavioral Health Services Act specifically, and to provide additional detail regarding Phase II planning.

##### 3. Due Dates and Deliverables.

The Behavioral Health Oversight Commission of the Legislature recommends that the Behavioral Health Implementation Plan be amended to provide further clarification of project "deliverables," and the commission requests that it be provided additional documentation regarding completed deliverables for its further review.

##### 4. Executive Branch Intent.

The Behavioral Health Oversight Commission of the Legislature recommends that the Behavioral Health Implementation Plan be amended to include additional narrative and further clarification of Nebraska Health and Human Services System policy and intent with respect to each required element of the plan as contained in LB 1083 (2004), section 20 (Neb. Rev. Stat., section 71-820).